Rock-Tenn Company *and* United Paper Workers International Union, AFL–CIO, CLC, and Its Local No. 907. Cases 25–CA–21739–1–2, 25–CA–21758, 25–CA–21879, 25–CA–22003, 25–CA–22051–2, 25–CA–22051–4, 25–CA–22051–5, and 25–CA–22137

November 30, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On May 25, 1993, Administrative Law Judge Michael O. Miller issued the attached decision. The Respondent filed exceptions with a supporting brief and an answering brief, the General Counsel filed cross-exceptions with supporting argument and an answering brief, and the Charging Party filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions, and to adopt his recommended Order as modified.[2]

A central issue in this case is whether two employee petitions, circulated some months apart during the certification year, furnished the Respondent with objective evidence sufficient to support a good-faith reasonable doubt of the Union's majority status that justified its otherwise unlawful announcement that it would withdraw recognition from the Union at the end of the certification year. Finding that they did not, the judge concluded that the Respondent violated Section 8(a)(5) by anticipatorily withdrawing recognition from the Union.[3] Because the judge found that the Union continued in its status as the exclusive bargaining representative of the unit employees after the certification year, he also found that the Respondent violated Section 8(a)(5) by refusing to furnish the Union requested information, by refusing to bargain with the Union for a successor agreement, and by withdrawing recognition from the Union at the end of the certification year.

The Respondent excepts, inter alia, to the judge's finding that it lacked objective evidence of the Union's loss of majority status and to his finding that it violated Section 8(a)(5) by the conduct described above. In support of these exceptions, the Respondent contends that it was entitled to rely on both the May and September 1991 employee petitions as objective evidence of the Union's loss of majority status and that the judge erred in finding that such reliance was improper. In this regard, the Respondent asserts that the judge erred in finding that the May petition was ''stale'' by the time the Respondent announced its belief that the Union had lost its majority support and in finding that it had been ''supplanted'' by the September petition. The Respondent also asserts that the judge erred in finding that the September petition was not objective evidence of employee sentiment because it was tainted by the Respondent's unfair labor practices. We find these exceptions without merit and, for the reasons explained below, adopt the judge's findings of these 8(a)(5) violations.

The facts, as are more fully set out by the judge, are as follows. In brief, the Respondent manufactures, sells, and distributes recycled paperboard and related products from its Columbus, Indiana facility. On February 22, 1991, the Union was certified as the collec-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The General Counsel has excepted to the judge's failure to make findings of fact and conclusions of law concerning the complaint allegation alleging that the Respondent verbally reprimanded employee Kathy Ellis in violation of Sec. 8(a)(3). We find it unnecessary to pass on this issue as the finding of an additional violation would be cumulative.

The judge incorrectly cited *Firestone Steel Products Co*. and *Burnup & Sims, Inc*. The correct citations to these cases are 228 NLRB 1040 and 379 U.S. 21, respectively.

[2] In his remedy, the judge found that the certification year should be extended for 1 year to allow for meaningful bargaining between the parties. In the circumstances here, we find a 6-month extension of the certification year to be appropriate. In this regard, we note that the certification issued February 22, 1991, that the parties held some 15 bargaining sessions between May 20 and October 10, that the parties made progress on contract terms during those negotiations, and that there is no allegation that the Respondent bargained in bad faith during this period. See, e.g., *Suzy Curtains, Inc*., 309 NLRB 1287 (1992); see also *Haymarket Bookbinders*, 183 NLRB 121 (1970); and *Colfor, Inc*., 282 NLRB 1173 (1987). We shall modify the Order to provide for a 6-month extension of the certification year.

Member Devaney agrees with the judge that in the circumstances present here the certification year should be extended for 1 year to allow sufficient time for meaningful bargaining between the parties. Member Devaney would find that the Respondent's unfair labor practices both during and after the certification year would necessarily have undermined the Union's bargaining position and effectively negated whatever had been achieved in the bargaining relationship up to that point. See *Outboard Marine Corp*., 307 NLRB 1333, 1348 (1992).

In the last paragraph of sec. II,B,4 of his decision, the judge found that the Respondent violated Sec. 8(a)(5) by ''announcing that it would withdraw recognition at the expiration of the certification year.'' He failed, however, to include this anticipatory withdrawal of recognition violation in his recommended Order. We shall further modify the Order to include this violation.

[3] Because the judge found that the Respondent lacked a good-faith reasonable doubt of the Union's majority status, he also found that the Respondent violated Sec. 8(a)(5) by conditioning agreement to an initial contract on a contract term coextensive with the certification year. For the reasons explained below, we adopt his finding of this violation.

tive-bargaining representative of the Respondent's production and maintenance employees.[4] The parties began collective bargaining on May 20, 1991,[5] and held 15 meetings through October 10. Although the parties made some progress in negotiations, they had not reached agreement on certain economic issues, dues checkoff, and contract duration. As to the latter, the Union had proposed contract terms of 1 to 3 years. The Respondent had not responded to these proposals, nor had it ever challenged the Union's majority status.

Meanwhile, in late May, employee Glenda Sowders gave Young, the Respondent's general manager, an employee petition dated May 23, 1991, that contained approximately 60 signatures. The petition stated that the undersigned felt ''that it [was] not in [their] best interest to be represented by the [Union].'' Sowders retrieved the petition from Young in June and returned it to him later that month with 80 signatures.[6]

A few months later, on September 24 or 25, Sowders and fellow employee Holly Trimble discussed the Union with Young. When Trimble stated that the Union was in and nothing could be done about it, Young responded that with their help, the ''Union could be taken out of here.'' When they asked how, Young responded that they would need to circulate a petition for a decertification election. Young dictated the language of the petition to Trimble.[7] Trimble and Sowders then circulated the petition both on their own time and on worktime. In mid-October, Sowders gave Young part of the September 25 petition. As of October 16, the list contained 66 names.[8] Included on the list were the names of 11 employees who had not signed the May petition. Adding these 11 employees to the 80 who had signed the earlier petition, Young concluded that 91 employees, over half the bargaining unit, were dissatisfied with the Union.

Relying on this ''objective evidence'' of the Union's loss of majority status, at the October 16 bargaining session the Respondent for the first time conditioned agreement on an initial contract to a term coextensive with the certification year that ended February 22, 1992. Forrester, the Respondent's counsel, explained that the Respondent had evidence that the Union no longer had majority support and that in those circumstances it would be inappropriate for the Respondent to bargain with the Union beyond the certification year. When the union representatives expressed surprise at the Respondent's position and noted that they were getting favorable responses from employees, Forrester responded that the Respondent's position was ''for real'' and was based on objective evidence.

The negotiating session set for the following day, October 17, was preceded by a rally at the plant gates. At the negotiating session, Ferson, the Union's spokesman, claimed that more employees had attended this rally than any held previously. When Young contradicted him, Ferson replied that Young had come through the plant gates after the employees had gone to work. Forrester then stated that recognition was based on the election of February 1991 and that the Respondent had concrete evidence that the Union had lost majority support. Forrester added that the Respondent would fulfill its bargaining obligation to the extent of the law, but would not bargain beyond February 22, the end of the certification year. The Union neither asked for nor was shown the Respondent's ''objective evidence.'' After the Respondent repeated its offer of a 4-month contract through Febrary 22, Ferson asked for and received the Respondent's ''final offer'' so that the unit employees could vote on the proposal. On October 18, the bargaining unit employees overwhelmingly rejected the Respondent's offer.

Immediately thereafter, Ferson and other local union officials decided to launch a membership drive to prove that the Union enjoyed the continued support of a majority of the Respondent's employees. Consequently, they solicited signatures on actual membership applications.[9] After the Union had collected cards from a majority of the unit employees, Ferson requested the mediator to arrange another bargaining session. When the parties met again on December 6, Ferson had 91 membership cards in his possession. At the December 6 bargaining session Ferson stated that the Union had applications from a majority of the unit employees and offered a modified contract proposal with a 1-year term. The Respondent replied that its October 17 offer was final. The Respondent rejected the Union's offer to allow a neutral third party to conduct a card check and insisted on its October 17 pro-

[4] Of the approximately 142 employees in the bargaining unit at that time, 78 voted for and 57 voted against the Union. During 1991 and 1992 there were approximately 155 or 156 employees in the bargaining unit.

[5] All dates henceforth are between May 1991 and February 1992 unless otherwise indicated.

[6] The judge found that the names of three employees, Jim West, Derrick Watts, and Theresa Bradley, bracketed on the petition with the notation ''Carried over from back page,'' did not appear on a back page of the four-page petition. Therefore, the judge subtracted their names from the petition. However, the signatures of these three employees are, in fact, contained on the back of the second page of the petition. For the reasons set out below, the judge's inadvertent error does not affect the result of our decision.

[7] The petition states:

> We the undersigned employees of Rock-Tenn, Columbus, In. do not wish to be represented by the United Paperworkers International Union. Therefor [sic] would like to request a revote February 15, 1992. We have learned that union leaders are searching for unfair charges so as to void this revote.

[8] Three names were added as of December 6.

[9] The application cards read:

> I hereby request and accept membership in the United Paperworkers International Union, AFL–CIO, CLC and do authorize said Union, through its agents to represent me in collective bargaining and enter into contracts with my employer.

posal. Following the December 6 negotiating session, the bargaining unit employees again voted on the Respondent's final offer. They approved the contract on the recommendation of their leadership.[10]

On December 9, Sowders told Trimble that it was time to file the decertification (September 25) petition. Sowders said that she was going to Indianapolis the next day on an errand for Brian Bramble, her supervisor, and that they could file the petition at that time. Sowders and Trimble clocked in on the morning of December 10 and then drove to Indianapolis where they filed the petition with the Board's Regional Office after Sowders had completed her business errand.[11] On their return to the Respondent's facility, they informed Young that they had filed the petition. Both Sowders and Trimble clocked out at 3:30 p.m. Although Young knew that Sowders had detoured from her errand to file the petition and that Trimble had accompanied her, and that both employees were on the clock at that time, the Respondent disciplined neither employee for performing personal business on company time.

Also on December 10, Ferson wrote to Young requesting negotiations to modify the agreement set to expire February 22. Ferson also requested that the Respondent supply information regarding the wages and fringe benefits of unit employees. Young replied on December 18. He declined to furnish the requested information based on ''clear, objective evidence'' that the Union had lost its majority support.[12] Young added that the Respondent would not recognize the Union beyond February 22. On February 22, 1992, the Respondent formally withdrew recognition from the Union.

As the judge explained, a union is entitled to an irrebutable presumption of majority status during the certification year; at the end of the certification year, the presumption becomes rebuttable. See, e.g., *Suzy Curtains, Inc*., 309 NLRB 1287 (1992). Thus, the Respondent was precluded from challenging the Union's majority status during the certification year, but could challenge that status when the certification year ended. When the Union requested bargaining during the certification year for a successor agreement to the initial contract, the Respondent, in essence, anticipatorily challenged the Union's majority status by announcing that it would withdraw recognition from the Union at the end of the certification year and that it would not bargain with the Union for a successor agreement. The ''test'' to determine whether such an anticipatory withdrawal of recognition is lawful is set out in *Abbey Medical/Abbey Rents*, 264 NLRB 969, 969 (1982):

> Such an ''anticipatory withdrawal of recognition'' in relation to a future contract is lawful if and only if the employer can demonstrate that, on the date of withdrawal and in a context free of unfair labor practices, the union in fact had lost its majority status, or respondent's withdrawal of recognition was predicated on a reasonable doubt based on objective considerations of the union's majority status.[13] [Emphasis added.]

Thus, the issue here is whether the Respondent's December 18, 1991 withdrawal of recognition from the Union ''was predicated on a reasonable doubt based on objective considerations of the [U]nion's majority status.''

We find initially, in agreement with the judge, that the May 1991 petition did not provide the Respondent with objective evidence sufficient to support a reasonable doubt of the Union's majority status. We agree with the judge that its circulation only a few days after the first bargaining session was premature and that it therefore cannot be relied upon as evidence of the Union's loss of majority support. We also find that at the time the Respondent withdrew recognition on December 18, 1991, the May petition was stale and thus did not accurately indicate the employees' true sentiments regarding the Union. In reaching this conclusion, we rely not only on the passage of time between the circulation of the petition and the Respondent's withdrawal of recognition, but also on the facts that unit employees showed their support for the Union in the intervening time by rallying in support of the Union on the morning of October 17 before overwhelmingly rejecting the Respondent's 4-month contract offer on October 18 and that a majority signed union membership cards prior to the December 6 negotiating session. Although such evidence is not dispositive of union sentiment, we note that although the Union brought these displays of employee support to the Respondent's attention and even offered to verify the membership cards through an impartial third party, the Respondent chose to totally disregard such evidence without any investigation. In the circumstances here, particularly where substantial time had elapsed between the circulation of the May petition and the Respondent's announced intent to withdraw recognition from the Union, we find that the Respondent was obligated to test its ''objective evidence'' of the

[10] The terms of the contract were immediately implemented. The contract was never executed, however, due to a disagreement over whether the Respondent changed or merely clarified certain contract terms. The General Counsel does not contend that the failure to execute the agreement independently violated Sec. 8(a)(5).

[11] At the time of filing, the decertification petition contained 85 signatures.

[12] The Respondent acknowledged at the hearing that the information that the Union sought was relevant to collective bargaining and that it would be obligated to furnish the information under Sec. 8(a)(5) if the bargaining obligation continued beyond the expiration of the initial contract.

[13] See also *R.J.B. Knits*, 309 NLRB 201, 205 (1992), and *Wilshire Foam Products*, 282 NLRB 1137, 1138 (1987).

Union's loss of majority status by fully considering more recent evidence to the contrary. Having failed to do so, the Respondent cannot then rely selectively on only part of the conflicting evidence regarding the union sentiments of its employees. For all these reasons, we find that the May petition does not constitute objective evidence sufficient to support a reasonable doubt of the Union's majority support among the bargaining unit employees.

We turn next to the other asserted objective evidence that the Respondent relied on in withdrawing recognition from the Union, the September 25 petition which Trimble and Sowders subsequently filed at the Board's Indianapolis Regional Office on December 10 as a decertification petition. As explained above, the Respondent suggested to Sowders and Trimble that the employees rid themselves of the Union through a decertification petition, and allowed the two employees to circulate the petition during working hours. The judge found, and we agree, that the Respondent violated the Act by these actions. The judge also found that during the period that the decertification petition was circulating among the unit employees, the Respondent committed other unfair labor practices which inhibited employee support for the Union. In this regard, the judge found that during this time the Respondent unlawfully prohibited employees from discussing the Union on worktime, interrogated an employee about his union sentiments, and gave a written warning to and suspended an employee because of his support for the Union. Thus, the petition was not circulated in a context free of unfair labor practices. Accordingly, we agree with the judge that the petition is tainted and that it does not provide objective evidence of the bargaining unit employees' sentiments regarding the Union.

Because we agree with the judge that the Respondent lacked a reasonable doubt of the Union's majority support when it withdrew recognition on December 18, we adopt his findings that the Respondent violated Section 8(a)(5) by anticipatorily withdrawing recognition from the Union, by refusing to furnish to the Union requested information, by refusing to bargain with the Union over a successor agreement, and by withdrawing recognition from the Union at the end of the certification year.[14]

Finally, we also agree with the judge that the Respondent violated Section 8(a)(5) by conditioning agreement to an initial contract on a contract term coextensive with the certification year. As the Board stated in *Suzy Curtains, Inc*., 309 NLRB 1287, 1288 (1992):

> Because of the special protection afforded bargaining relationships during their first year, *the same standards apply to assessing the lawfulness of an employer's insistence on a contract duration coextensive with the certification year as apply to postcertification year withdrawals of recognition*. Thus, in order to find lawful the Respondent's adherence to the certification year contract duration proposal, it has the burden of showing either that the Union had actually lost its majority standing, or that the Respondent held an objectively based good-faith doubt of the Union's majority. [Emphasis added.]

In the circumstances present here, the evidence establishes that the Respondent lacked a reasonably grounded doubt of the Union's majority status not only on December 18, when it anticipatorily withdrew recognition, but also on December 6, when it conditioned agreement to an initial contract. As explained above, we agree with the judge that the May petition was stale by December. Thus, on December 6, the Respondent could rely only on the September 25 decertification petition as evidence of the Union's loss of majority support. That petition, however, as we have found, was tainted by the Respondent's unlawful conduct in instigating the petition. Moreover, on December 6, the petition contained at most only 69 valid signatures, clearly less than a majority of unit employees. Therefore, the applicable legal analysis and the relevant facts compel the finding that the Respondent lacked a good-faith and reasonably grounded doubt, supported by objective considerations, of the Union's majority status on December 6 as well as on December 18.[15] In these circumstances, the Respondent could not legitimately premise its contract duration proposal on the Union's supposed loss of majority support. Accordingly, the Respondent acted unlawfully in conditioning agreement to an initial contract on a contract term coextensive with the certification year.[16]

[14] Because we agree with the judge that the Union continued as the exclusive bargaining representative of the unit employees after the certification year, we also adopt his finding that the Respondent violated Sec. 8(a)(5) by unilaterally changing terms and conditions of employment after the expiration of the certification year.

[15] Absent a showing that a majority of unit employees support a decertification petition, such a petition, standing alone, is not sufficient to establish a reasonable doubt of a union's majority status. See, e.g., *Barclay Caterers*, 308 NLRB 1025 fn. 2 (1992); and *Alexander Linn Hospital Assn*., 288 NLRB 103, 107 (1988), enfd. 866 F.2d 632 (3d Cir. 1989).

[16] Member Cohen agrees that the Respondent violated Sec. 8(a)(5) by insisting on a contract that did not extend beyond the end of the certification year. In this regard, he notes that such conduct began on October 16. Although a majority of employees had indicated in May and June that they no longer desired union representation, the Respondent, in September, took its own unlawful steps to oust the Union. The Respondent dictated the language of a decertification petition, and allowed employees to circulate it during working time. Notwithstanding these efforts, only 66 employees, a minority, had

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ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Rock-Tenn Company, Columbus, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(c).

''(c) Failing and refusing to bargain in good faith with the Union by conditioning agreement to an initial contract on a contract term coextensive with the certification year, anticipatorily withdrawing recognition from the Union on December 18, 1991, withdrawing recognition from the Union at the conclusion of the certification year, refusing to meet and bargain in good faith with the Union without possessing a reasonable belief based on objective considerations that the Union no longer possesses majority support, refusing to furnish the Union with information relevant and necessary to the performance of its role as collective-bargaining representative of the employees in the above-described appropriate unit, and unilaterally changing terms and conditions of employment of unit employees without notice to or bargaining with the Union as the representative of those employees.''

2. Substitute the following paragraph for paragraph 2(a).

''(a) Recognize and, on request, bargain in good faith with United Paper Workers International Union, AFL–CIO, CLC, and its Local No. 907, as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit and continue to do so for 6 months thereafter as if the initial certification year had not yet expired:

> All production and maintenance employees of the Employer at its Columbus, Indiana facility, but excluding all office clerical employees, all professional employees, and all guards and supervisors as defined in the Act.''

3. Substitute the attached notice for that of the administrative law judge.

signed this petition as of October 16. The Respondent repeated its position as to contract duration on December 6 by which time the 66 antiunion employees had grown to 69, still a minority. As of that time, the Respondent had committed additional 8(a)(1) violations in November. In these circumstances, the Respondent's position was unlawful on October 16 and on December 6.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT assist, provide financial assistance to, or encourage the filing of decertification petitions or the solicitation of union-membership revocation petitions.

WE WILL NOT threaten employees with discipline if they talk about the Union at work.

WE WILL NOT coercively interrogate our employees about their union membership, activities, and desires.

WE WILL NOT deny employees their *Weingarten* rights, i.e., their right to the presence of a union steward when called in to the presence of a supervisor under circumstances where they reasonably believe they may be disciplined, and WE WILL NOT threaten employees with discipline if they insist on their *Weingarten* rights.

WE WILL NOT threaten employees that continued union representation would be futile.

WE WILL NOT threaten employees with discipline or discharge for engaging in union activities.

WE WILL NOT interfere with the processes of the National Labor Relations Board by attempting to induce employees to withdraw allegations filed with the Board and to refuse to honor Board subpoenas.

WE WILL NOT discriminatorily discipline employees for engaging in union activities or discriminatorily deny employees leaves of absence requested in order to engage in union activities.

WE WILL NOT fail and refuse to bargain in good faith with the Union by conditioning agreement to an initial contract on a contract term coextensive with the certification year, anticipatorily withdrawing recognition from the Union, withdrawing recognition from the

Union at the conclusion of the certification year, refusing to meet and bargain in good faith with the Union without possessing a reasonable belief based on objective considerations that the Union no longer possesses majority support, refusing to furnish the Union information relevant and necessary to the performance of its role as collective-bargaining representative of the employees in the below-described appropriate unit, or unilaterally changing terms and conditions of employment of unit employees without notice to or bargaining with the Union as the collective-bargaining representative of the employees in the appropriate unit.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize and, on request, bargain in good faith with United Paper Workers International Union, AFL–CIO, CLC, and its Local No. 907, as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit, and WE WILL continue to do so for 6 months thereafter as if the initial certification year had not expired:

> All production and maintenance employees of the Employer at its Columbus, Indiana facility, but excluding all office clerical employees, all professional employees, and all guards and supervisors as defined in the Act.

WE WILL make William Schonfield whole for any losses he suffered as a result of the discriminatorily issued suspension and WE WILL revoke the warnings discriminatorily issued to William Schonfield and Kathy Ellis and expunge all references to those warnings and suspension from their personnel files and notify them in writing that this has been done and that evidence of these unlawful actions will not be used as a basis of future personnel actions against them.

ROCK-TENN COMPANY

Ann Rybolt, Esq., for the General Counsel.
Larry E. Forrester, Esq. (Smith, Currie & Hancock), for the Respondent.
Nora L. Macey, Esq. (Macey, Macey & Swanson), for the Charging Party.

DECISION

MICHAEL O. MILLER, Administrative Law Judge. These consolidated cases were heard in Columbus, Indiana, on January 25–28, 1993, based on unfair labor practice charges and amended charges filed by United Paper Workers International Union, AFL–CIO, CLC and its Local No. 907 (the Union) between January 16 and September 3, 1992, and complaints and orders consolidating complaints issued by the Regional Director for Region 25 of the National Labor Relations Board. The consolidated complaint, issued September 29, 1992, alleges that Rock-Tenn Company (Respondent or the Employer) violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). Respondent's timely filed answer denies the commission of any unfair labor practices.

On the entire record,[1] including my observation of the witnesses and their demeanor, and after considering the briefs filed by General Counsel, Respondent, and the Charging Party, I make the following

FINDINGS OF FACT

I. THE EMPLOYER'S BUSINESS AND THE UNION'S LABOR ORGANIZATION STATUS

Preliminary Conclusions of Law

Rock-Tenn Company, a corporation with its principal office and place of business in Norcross, Georgia, and other places of business throughout the United States, is engaged in the manufacture, sale, and distribution of recycled paperboard and related products at its facility in Columbus, Indiana. In the course and conduct of its business operations at that facility, it annually purchases and receives goods and materials valued in excess of $50,000 directly from points located outside the State of Indiana and annually sells and ships goods and materials valued in excess of $50,000 directly to points located outside the State of Indiana. The complaint alleges, Respondent admits and I find and conclude that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, Respondent admits, and I find and conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Background—Union Representation*

On a petition filed by the Union on December 7, 1990, in Case 25–RC–8989, an election was conducted on February 14, 1991, among Respondent's production and maintenance employees.[2] Of the approximately 142 employees in the unit at that time, 78 voted for, and 57 voted against, representation. The Union was certified as exclusive collective-bargaining representative of those employees on February 22, 1991.

Respondent's Columbus, Indiana plant (the plant) operates on a three-shift basis. During 1991 and 1992, the average complement of its production and maintenance work force, according to General Manager Roy Young, was 155–156. Reporting to Young at the relevant times were Department Heads Bill Snyder (converting), Corey Carr (die cutting), Burdett Utter (shipping and receiving), and Jerry Barnhart (quality control). Wayne Pennington was the second-shift converting department supervisor and Karen Haggard was the first-shift die cutting supervisor, each reporting to his or her respective department head. There was no plant manager during 1991 and 1992.

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[1] General Counsel's unopposed motion to correct the transcript is granted.

[2] The unit, stipulated to be appropriate, is:

> All production and maintenance employees of the Employer at its Columbus, Indiana facility, but excluding all office clerical employees, all professional employees, and all guards and supervisors as defined in the Act.

B. *The 8(a)(5) Allegations*

1. Contract term and withdrawal of recognition

Collective bargaining began on May 20, 1991.[3] Through October 10, the parties met 15 times and had made some progress toward an initial agreement. No agreements had been reached, however, on the various economic issues, union security and checkoff, use of contract or temporary labor, or holidays. Although the Union had proposed terms of 1 to 3 years for that initial agreement, the Employer had made no counterproposal on that issue. Neither had the Employer questioned the Union's majority status.

When the parties met on October 16, the Union presented some revised proposals and the Employer caucused. On the return of the management representatives, Company Counsel Forrester proposed a contract term through February 22, 1992. He stated that management had received evidence that the Union no longer had the support of a majority of the employees and believed that it would be inappropriate for it to bargain with the Union beyond the certification year. After a caucus, the Union's representatives expressed their puzzlement over the Employer's position and noted that they had been getting favorable responses from the employees. Forrester reiterated the Employer's position, stating that it was not to be taken frivolously, that it was ''for real,'' and was based on objective evidence that the Union no longer represented a majority.

The meeting of October 17 was preceded by a rally at the plant gates. When the negotiators met, the Union's spokesman, Dan Ferson, referred to the rally, claiming that more employees had shown their support than had participated in any previous demonstration. Young contradicted him, claiming to have photographs. Ferson disputed that and pointed out that Young had come through the gate after the employees had already gone to work. Forrester then stated that the recognition was based on the election of February 1991, that they had concrete evidence that the Union no longer had the support of a majority of the employees, and that the Company was fulfilling its responsibility to bargain to the extent of the law but would not bargain for terms and conditions of employment beyond February 22. He said that this was not a bargaining position. The Union was not offered and did not request to see the Employer's claimed objective evidence.

Following a caucus, the Company repeated its offer of a 4-month contract, through February 22, with all its proposals as previously stated except that it improved its wage offer by 5 cents per hour. Ferson told management that an employee vote was scheduled for the following day and asked for the Employer's offer in writing so that he could read it, verbatim, to the employees. The ''Company Final Offer for Agreement'' was provided to Ferson that afternoon. In meetings with each of the shifts held on October 18, the Company's offer was overwhelmingly rejected.

Following a December 6 meeting wherein the Employer reiterated its final offer, that offer was again taken to the employees. At this time, they accepted it on the recommendation of their leadership. Its terms were immediately implemented although that agreement was never executed due to a disagreement over certain terms which the Union claimed Respondent had changed and Respondent claimed it had merely clarified.[4]

On December 10, Ferson wrote Young, requesting negotiations to modify the agreement expiring on February 22. He also requested personal information concerning the unit members, their wages, and fringe benefits, so that the Union could ''intelligently and understandingly perform its duty as sole bargaining agent.'' Attached was a copy of the Union's notice to the appropriate mediation agencies. Young replied on December 18. He declined to furnish any of the information sought by the Union on the basis of the alleged ''clear, objective evidence that the majority of the employees here do not want to be represented by the U.P.I.U.'' Rock-Tenn, he stated, would not recognize the Union as the employees' representative beyond February 22, 1992.

Respondent acknowledged, at hearing, that the information sought by the Union was relevant to collective bargaining and would be required to be furnished under Section 8(a)(5) if the bargaining obligation continued beyond the expiration of the initial agreement.

On February 22, 1992, the Employer formally withdrew recognition of the Union.

2. The Employer's ''Objective'' evidence

Young claimed that two employee petitions supported the Employer's good-faith doubt of the Union's continued majority status. The first (G.C. Exh. 4) is dated May 23, 1991 (just 3 days after the first bargaining meeting), on its first page. The remaining pages, and the signatures, are undated. The first and third pages of this petition are captioned, ''We the undersigned feel that it is not in our best interests to be represented by the United Paperworkers Union.'' The second and fourth pages, while numbered consecutively, are uncaptioned.

Young testified that employee Glenda Sowders initially gave him a copy of that petition in May, when it bore some 60 or more names. She then retrieved it from him in June, he said, and returned a copy of it to him in that same month, with a total of 80 signatures.[5] Included among the 80 names on Young's copy are 3, Jim West, Derrick Watts, and Theresa Bradley, which appear to be written by the same hand; they are bracketed with the notation, ''Carried over from back page.'' Only one of these names, that of Watts, appears on the subsequent petition (G.C. Exh 5, discussed infra). His purported signature on that petition (as number 58) is distinctly different from what purports to be his signature on the May 23 petition (number 71), even to a layman's eye. The original of the petition, in evidence as Respondent's Exhibit 5, does not contain any page, back or front, with signatures by West, Watts, or Bradley. Also included on the May 23 petition are the names of Valerie Wheatley, discharged some

[3] All dates hereinafter are between May 1991 and February 1992 unless otherwise specified.

[4] General Counsel does not now contend that Respondent's failure to execute the agreement independently violates Sec. 8(a)(5).

[5] When asked whether he mentioned this petition to the Union at any time before October, Young ''corrected'' his testimony, claiming that Sowders retrieved the petition from his custody in June and returned it to him, signed by 80 employees, in August or September. Sowders, a lead janitor and sister of Supervisor Karen Haggard, did not corroborate Young's corrected recollection. I find that he had this petition in his possession, but did not disclose it to the Union, since June.

time prior to November 18, and Gary Browning, assistant maintenance supervisor.

On November 6, Local Union President Pat Bishop provided Young with the names of 14 employees who had been selected and agreed to serve as union stewards. Included among those 14 were at least 3, Tony Smith, Cliff McCrory, and Brian Hammond, whose names had appeared on the May 23 petition. Also among those 14 were the names of Eddie Schonfeld and Robbie Baker. Schonfeld had been named as a steward and both had requested the presence of their stewards when faced with possible discipline. Young did not discount these five names from the May 23 petition at any time in reaching his conclusion that the Union had lost its majority.

Additionally, Young claimed that immediately prior to October 16, Sowders had given him the first page and at least part of the second page of a second petition.[6] On cross-examination, he subsequently testified that he had been given pages one and two and part of page three. That petition (G.C. Exh 5) was dated September 25 and bore the following caption:

> We the undersigned employees of Rock-Tenn, Columbus, In. do not wish to be represented by the United Paperworkers International Union. Therefor [sic] would like to request a revote February 15, 1992. We have learned that union leaders are searching for unfair charges so as to void this revote.

While Young did not recall how many names were on the September 25 petition when he first saw it, he claimed that it included the names of 11 employees who had not signed the May 23 petition. He added those names to the 80 on that petition, thus contending that 91 employees had signified their disaffection from the Union by Respondent's October 16 demand to limit the contract term and its expression of intent to withdraw recognition at the conclusion of the certification year.

As filed with the Labor Board in support of a decertification petition on December 10 (discussed infra), the second petition contains 85 names.[7] Of these, 47 purport to be dated on or before October 16, 3 are dated in the second half of October, and 10 are dated December 9 and 10. Twenty-five are undated. There were, at most, 66 signatures on that petition by October 16, and only 69 by December 6, if all of the signatures which appear to have been affixed to that petition on or before those dates were to be counted.

Young added the names of additional signatories from the second petition to those included on the first. However, he did not subtract from the count of those signing the first petition those individuals who had signed the first but not the second. As of October 16, there were 28 employees who had signed the first but not the second petition; even as of December 6, when the Union offered to re-prove its majority (discussed infra), 27 of the original signers had declined to sign the second. Neither did Young ever subtract the names of those who, though signing the first petition, subsequently accepted active roles in the Union's administration or those who called on the Union for its assistance.

Respondent offered no evidence that anyone had compared the signatures on the petitions with the signatures of known employees to determine their validity. Neither was any evidence offered that the lists were compared with any lists of active unit employees on any relevant dates.

As previously noted, Young had estimated the average unit complement as approximately 155 or 156 employees during 1991 and 1992. While he testified that there were 146 unit employees on October 16 (of whom he believed 86 did not support the Union) and 151 employees on December 6 (of whom he believed 82 did not wish to be represented), Respondent proffered no evidence of the unit complement on any relevant date.[8]

In addition to the petitions, Young claimed to have relied on statements made to him by numerous employees to the effect that they had only signed union cards so that they could vote in the election or for other reasons. He was able to name only one such employee and it was apparent that his conversation with that employee and any others that he may have spoken to concerned their reasons for signing union pledges prior to the February 14, 1991 election. Even Respondent's counsel acknowledged at the hearing that any such conversations became irrelevant after the Union won the election.

It is not the practice of this Union to accept memberships or dues from unit employees before an initial contract is signed. However, following the October 16 meeting, Ferson and the officers of the Local discussed what could be done to clearly establish the Union's continued majority support. They decided to launch a membership drive, soliciting signatures on actual membership applications. Those cards read:

> I hereby request and accept membership in the United Paperworkers International Union, AFL–CIO, CLC and do authorize said Union, through its agents to represent me in collective bargaining and enter into contracts with my employer.

Between October 18 and the beginning of November, according to Ferson, 75 employees had signed, out of 143–144 on a mailing list provided by the Employer. At that point, Ferson requested that the mediator set up another meeting and one was scheduled for December 6.

When the parties met on December 6, Ferson had 91 membership cards in his possession and had been told of 3 more which had been signed. He introduced Kathy Ellis, the newly elected local union president, and told the Company's representatives that a vast majority of the employees had attended the meetings to vote on the contract and had rejected

[6] Sowders denied that she gave him a copy of this petition before December 10 although she acknowledged showing it to him. Young claimed that when she showed it to him, he made a copy. Given Respondent's interest in ousting this Union, I find it plausible that he would have made a copy if given the opportunity to do so.

[7] For some unexplained reason, the numbering jumps from number 77 to number 87. There are no signatures numbered from 78 to 86.

[8] R. Exh. 7 (for identification), a compilation prepared for this litigation, purports to set forth the number of unit employees on the two dates. It lists only those who signed one or both petitions, with their dates of hire and termination. Neither the raw employee complement figures nor the list includes any employees who may have been hired after October 16. I sustained an objection to receipt of that exhibit on the basis that it had not been used by Respondent in reaching its decision respecting continued recognition. For that reason, and in light of its self-serving nature, I adhere to that ruling.

it. He then told them that since management had claimed that the Union did not represent a majority, the Union had secured applications for union membership from a majority of the employees. He put forward a modified contract proposal, calling for a 1-year contract term and the Company's representatives caucused.

When they returned, management's positions remained unchanged; its October 17 proposal was final. Ferson reiterated that the Union could prove its majority status with evidence of actual memberships; he read them the above-quoted language from the membership application. Ferson offered to permit a neutral third party to conduct a card check and suggested that the mediator would be acceptable to the Union. His offer fell on deaf ears. According to Young, the offer was rejected because employees had told him that they had ''signed cards so they could vote''; his list of those who had signed either petition was, to him, better evidence than anything the Union could produce. Neither the fact that an employee had signed a membership application or had taken an active role in the Union could convince him that that employee supported the Union if that employee had earlier signed one of the antiunion petitions.

3. Other alleged 8(a)(5) conduct

In the contract agreed to by the parties, the parties had provided for the employees to receive two breaks, of 10 minutes' duration each, on each shift. One was to be taken before the meal break and one after. That, however, was not the practice followed by the tow motor drivers. At least until the end of April, they worked continuously, without scheduled breaks, taking their breaks and meals when they were caught up. On April 30, 1992, however, Courtney Carr told Terry Conrad and Ray Froedge, the tow motor drivers on the third shift, that they were taking too many breaks. Henceforth, he told them, one driver would take his break when the machine operators took theirs; the other would take his when the first concluded his break. This policy, Conrad testified, was to be applied to all shifts. As far as Conrad was able to determine, however, it was only applied on the third shift. Inasmuch as the Employer was no longer recognizing the Union, there was no discussion with union representatives prior to Carr's pronouncement.

4. Conclusions as to the refusals to bargain

In *Suzy Curtains, Inc*., 309 NLRB 1287 (1992), the Board addressed a factual situation closely parallel to the instant case. In the course of negotiations for an initial agreement during the certification year, the employer had asserted an alleged good-faith doubt of the union's continued majority status and insisted on a contract duration coextensive with that certification year. The Board stated at 1288:

> A union is entitled to an irrebuttable presumption of continuing majority status for 1 year following its certification. [Citing *Brooks v. NLRB*, 348 U.S. 96 (1954).] After 1 year, the presumption becomes rebuttable.

It continued:

> Once the certification year elapses, an employer may lawfully withdraw recognition if it is able to rebut the union's continuing majority presumption either by establishing that the union has actually lost its majority, or by showing that it had a reasonably based doubt as to the union's majority status. [Citing *Guerdon Industries*, 218 NLRB 658 (1975); *Chet Monez Ford*, 241 NLRB 349 (1979); and *Robertshaw Controls Co*., 263 NLRB 958 (1982).] Because of the special protection afforded bargaining relationships during their first year, the same standards apply to assessing the lawfulness of an employer's insistence on a contract duration coextensive with the certification year as apply to postcertification year withdrawals of recognition. Thus, in order to find lawful the Respondent's adherence to the certification year contract duration proposal, it has the burden of showing either that the Union had lost its majority standing, or that the Respondent held an objectively based good-faith doubt of the Union's majority. [Citation omitted.]

Implicit in the Board's reference to *Guerdon*, *Chet Monez Ford*, and *Robertshaw Controls*, supra, is the further requirement that the alleged good-faith doubt must be raised in a context free of unfair labor practices.

The burden of proof as to these standards rests on the employer, who must meet that burden by a preponderance of the evidence. The evidence on which it relies, moreover, must point to an actual, rather than a speculative or conjectural, loss of majority. *Laidlaw Waste Systems*, 307 NLRB 1211 (1992), and cases cited there. As the Board stated in that case at 1211–1212:

> It is fair to say that the Board will not find that an employer has supported its defense by a preponderance of the evidence if the employee statements and conduct relied on are not clear and cogent rejections of the union as bargaining agent, i.e., are simply not convincing manifestations, taken as a whole, of a loss of majority support.

The evidence relied on by the employer must show that a majority of unit employees have actually repudiated the union. Mere expressions of displeasure with the union's representation or of a desire for another election will not establish that loss of majority. A showing that many, but less than a majority, are disaffected, and a belief that others might also be, is also inadequate. *Suzy Curtains*, supra. In addition to showing such disaffection, the employer also bears the burden of establishing the size of the unit. *Laidlaw Waste Systems*, supra; *Phoenix Pipe & Tube Co*., 302 NLRB 122 (1991).

Application of the foregoing principles to the facts of this case compels me to conclude that Respondent has failed to satisfy the burdens described above.

In *Brooks v. NLRB*, supra, the Supreme Court (348 U.S. at 100) voiced its approval of reasoning, by the Board and courts of appeal, that:

> (c) A union should be given ample time for carrying out its mandate on behalf of its members, and should not be under exigent pressure to produce hothouse results or be turned out.
>
> (d) It is scarcely conducive to bargaining in good faith for an employer to know that, if he dillydallies or

> subtly undermines, union strength may erode and thereby relieve him of his statutory duties . . . .

Here, Respondent's principal evidence in alleging a good-faith doubt of majority status was a petition initiated only 3 months after certification and only 3 days after the opening of negotiations. Even assuming that that petition was signed by a majority of the unit employees, it was so premature as to render it irrelevant. *United Supermarkets*, 287 NLRB 119 (1987), enfd. 862 F.2d 549 (5th Cir. 1989).

In *United Supermarkets*, supra, the employer withdrew recognition at the conclusion of the certification year, relying in part on a decertification petition supported by 90 percent of the unit employees which had been filed only 5 months after certification, when, as here, bargaining had just begun. The Board stated at 120:

> Although it is true that Respondent delayed formally withdrawing recognition from the Union until the certification year expired, it is also true that the Respondent relied in part on this prematurely filed petition to support its withdrawal. We believe that just as the petition could not raise a question concerning representation nor be acted on by the Respondent within the certification year, the Respondent cannot subsequently rely on it to justify a more timely withdrawal of recognition.

Similarly, the court reviewed the timing of the employees' petition and rejected it as evidence on which the employer could rely. It stated (862 F.2d at 553):

> An impatience and lack of support for the Union on the part of employees was understandable. Thus, to give weight to this decertification petition would defeat the policy behind the special status given a union during the certification year. A union needs to be given a reasonable time to prove its worth to the employees without added pressure from the employer. See *Brooks*, 348 U.S. at 100, 75 S.Ct. at 179.

These holdings of both the Board and the court, which are equally applicable to Respondent's actions here, stand independent of the Board's further finding that the decertification petition was an unreliable indicator of ''uncoerced employee sentiment'' in view of that employer's as yet unremedied unfair labor practices.

Additionally, I would find that the circumstances of this case preclude any weight being given to the May 23 petition. Thus, in addition to being premature, it was supplanted by a second petition, that of September 25. Where one petition, which arguably attracts the support of a majority of the employees, is circulated early in the certification year and is followed by a second which does not attract majority support, taken after the union has begun to establish itself in the plant, that second petition cannot be considered in addition to the first; it must be deemed to negate it.

Moreover, assuming that it could otherwise be relied on, Respondent has failed to establish that the May 23 petition represented the sentiments of a majority of its unit employees. Respondent adduced no evidence that it authenticated the signatures on that (or the subsequent) petition. Had it done so, it would have discovered that at least three signatures were not those of the named employees but had, at best, been copied over from some other document. It would also have discovered that at least one alleged signatory was a supervisor. At best, then, there were 76 purportedly valid signatures on that petition, negating the Union's presumed majority status only if the unit had 152 or fewer employees.[9] Young estimated the average employee complement at 155 or 156 and Respondent, whose burden it was, presented no evidence of the actual number of unit employees as of May 23, October 16, or any subsequent date.

Further, Respondent bargained from June through mid-October without ever alluding to the alleged loss of majority status. In light of Respondent's failure to authenticate the signatures and this extended ''wait-and-see'' bargaining, in addition to the petition's premature nature, I must conclude that the May 23 petition has no probative value. *Quality Hardware Mfg. Co*., 307 NLRB 1445 fn. 2 (1992).

Beyond negating the probative worth of the May 23 petition, Respondent's bargaining while supposedly possessing evidence that the Union lacked majority support, and then insisting on a limited contract term to be followed by a withdrawal of recognition at the earliest possible date, is independently violative of Section 8(a)(5). In *Bolton-Emerson, Inc*., 293 NLRB 1124, 1129 (1989), the Board adopted the following conclusion by Administrative Law Judge Walter H. Maloney:

> Challenging a union's status as a bargaining representative is not a legitimate bargaining ploy. Negotiating only so long as negotiations appear to produce desired results and then breaking them off when they fail to do so, under a claim that the employee representative is no longer the true spokesman for the bargaining unit, is both bad-faith bargaining and a bad-faith withdrawal of recognition.[10]

Respondent's alleged reliance on the September 25 petition does not improve its legal position. Viewed independently of the earlier petition (as I believe it must be), it cannot support an anticipatory withdrawal of recognition. As of October 16, it contained 66 or fewer signatures; there is neither evidence nor any contention that this represented a majority of the unit at any relevant time. Any signatures added after October 16 were tainted by Respondent's insistence on the coterminous expiration date and its threatened withdrawal of recognition; they count for naught. Even assuming those additional signatures should be counted, there were, at most, 69 signatures on that petition by December 6, when Respondent refused the Union's offer to re-prove its majority and reiterated both its insistence on the limited contract term and its intention to withdraw recognition on February 22. There is no evidence that this represented a majority at that time or

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[9] Respondent would only have to prove that 50 percent of the employees rejected the Union at an appropriate time to negate the Union's presumed majority status. *NLRB v. LaVerdiere's Enterprises*, 933 F.2d 1045, 1052 (1st Cir. 1991).

[10] I see no meaningful distinction between breaking off negotiations and withdrawing recognition where the parties are beyond the certification year and Respondent's conduct here of insisting on a contract limited to the remainder of the certification year with a stated intention of withdrawing recognition the moment that certification year expired.

that the unit had as few as 138 employees at any relevant time.

Respondent sought to overcome the latter hurdle by combining the two petitions to the extent that this worked to its benefit. Even assuming, contrary to logic, that the first petition remained a valid indicator of employee sentiment after a second was circulated, this contention avails Respondent not. Thus, Respondent added to the names contained on the May 23 petition those additional names found on the September 25 petition. It did not, however, discount from the earlier petition the names of still active employees who did not sign the later one. Doing so would have negated the majority claimed by Respondent. Surely, if adding one's name to such a petition evidences hostility toward the Union's continued role, refraining from doing so must reasonably be interpreted as evidencing support for that role (particularly where the solicitations of signatures for that petition were as pervasive as they were here).

Finally, in this regard, there is the matter of the Union's offer to prove its majority through a card check by a neutral third party. Given the (at best) questionable validity of the May 23 petition and the absence of anything approaching a majority signing the September 25 petition, the Union's offer to demonstrate its continued majority support ''should have caused [Rock-Tenn] to move cautiously before withdrawing recognition.'' *NLRB v. LaVerdiere's Enterprises*, supra, 933 F.2d at 1053. Here, as in that case, ''[t]here is . . . no evidence of any effort undertaken by the Company to unravel the conflicting messages it had received from its employees in order to determine the extent of true opposition to the Union.'' It acted at its own risk in withdrawing ''recognition in the midst of mixed signals . . . [and] lacked an objectively based good faith doubt of majority status when it withdrew recognition . . . in doing so, it violated § 8(a)(5) of the NLRA.''

Respondent justified its disregard of the Union's renewed assertion of majority status on the basis that employees had allegedly told Young (apparently in reference to the preelection union support) that they had signed cards for various reasons, not all indicating true support for representation. Respondent apparently did not consider that the signatures on the antiunion petitions may have suffered from the same alleged infirmities. There is evidence on this record that the solicitors of the antiunion petitions told employees whatever might be necessary in order to get them to sign those petitions.

As discussed above, any claim of a good-faith doubt of a union's majority status must be raised in a context free of unfair labor practices. As discussed in detail below, I find such a context missing here. The unfair labor practices which I find, including encouragement and support of the decertification activities and the prohibition of prounion conversations, preclude the existence of such a good-faith doubt.[11]

Accordingly, I find that by conditioning agreement on a contract term coextensive with the certification year, announcing that it would withdraw recognition at the expiration of the certification year, refusing to furnish information necessary to the Union's role as collective-bargaining representative, refusing to meet for negotiations for a collective-bargaining agreement to replace the agreement expiring on February 22, withdrawing recognition on the expiration of the certification year and by unilaterally changing the terms and conditions of employment of the tow motor drivers without notice to or bargaining with the Union, Respondent has failed and refused to bargain in good faith with the Union in violation of Section 8(a)(5).

C. *The 8(a)(1) Allegations*

1. Employer support for antiunion petitions

On September 24 or 25, according to the credible testimony of Holly Trimble, she and Glenda Sowders discussed the Union with Young. When she told Young that it was in and nothing could be done about it, he contradicted her, stating: ''With your help that Union could be taken out of here.'' They asked how and he told them that they would need to have a petition circulated for a decertification election. Trimble asked how it should be worded and Young dictated the language to her. Trimble and Sowders immediately began to circulate that petition.[12]

Trimble circulated the September petition throughout her workday, on both her own time and her worktime as well as when others were working. Her activities were open and she was never cautioned against using worktime to engage in them. She regularly apprised Young as to the progress of the petition drive. At one point, she told him that she did not know the names of the new employees. He promised to leave a list for her on his desk. Before she could get back to his office, however, Converting Manager William Snyder brought one to her. It identified every employee, with that employee's department, machine, and shift listed. After Die Cut Manager Courtney Carr told her that employees were questioning why she was being allowed to circulate throughout the plant and talk to them out on the floor, Snyder expanded her tasks and extended her shift in such a way as to increase her access to the employees of all three shifts. She used the expanded access to solicit more employees.[13]

On December 9, Sowders told Trimble that it was time to file their petition with the NLRB in Indianapolis. Sowders said that she would be going to Indianapolis on the next day to pick up a computer part for Brian Bramble, her supervisor in maintenance, and they would use that trip to file the petition.[14] Trimble told her that she was supposed to be work-

[11] They also taint the petition signed by some employees seeking return of their membership application cards.

[12] Trimble, who had been a strong supporter of the Union, had switched her allegiance to become equally antiunion in April after she lost a bid for union office. She voluntarily terminated her employment in December 1992 and had no apparent reason to give false testimony helpful to the Union's cause or harmful to that of the Employer. Sowders testified that the language was authored by herself and Trimble and was written out by a third employee, Holden. She did not expressly deny Young's involvement and Young did not deny that the idea for and the language of this petition originated with him. I credit Trimble.

[13] While Snyder denied supplying Trimble with such a list, Young did not deny making a list available to her and I find Trimble's recollections more accurate. Neither Snyder nor Carr denied Trimble's assertions regarding the expansion of her work so as to increase her access to other employees.

[14] Running errands for the Employer was a regular part of Sowder's job. This trip may have been longer than most, but I cannot find that it was assigned to her as a subterfuge so as to enable her to file the petition.

ing; Sowders suggested that Trimble tell people that she was accompanying Sowders because of her familiarity with Indianapolis. Subsequently, Sowders told Trimble that she had spoken with Carr and that Carr had said that Trimble could work the second shift or make some other arrangements. Trimble objected to having to work the second shift in order to get paid if Sowders was being paid for the day.

Trimble clocked in at about 6:50 a.m. on December 10, shortly after Sowders. They left the plant, drove to Indianapolis, picked up the part, went to the NLRB Regional Office, filed the decertification petition supported by the September 25 petition, had lunch in Indianapolis, and returned to the plant by about 12:15 p.m. On their return, they told Young that the petition had been filed. Young was aware that Trimble had accompanied Sowders; he was also aware that Sowders had been on the clock throughout the time she had been in Indianapolis. Sowders received no discipline for detouring from her route and using company-paid time to file the decertification petition. Trimble worked until 3:30 p.m. and clocked out at that time, as did Sowders.

At the hearing, Carr contended that Trimble had worked on the second, rather than the first shift, on December 10. Young claimed that he had the same understanding. When a charge was filed alleging employer support for the decertification activities, Carr called Trimble at her home and directed her to return to the plant. On her return, she was given a writeup which stated that she had actually worked on the second shift but had failed to properly clock out even though she told him that she had worked the first shift. To protect herself from future discipline, she added to the writeup that she had forgotten to clock out at the end of the second shift and that someone else must have clocked her in at 6:50 a.m. At the hearing, Trimble contended that the entire writeup was phony, created to cover the fact that she had been on the clock when she accompanied Sowders to Indianapolis.[15]

Within the week after she had filed the decertification petition, Trimble told Young that, to her surprise, a lot of union membership cards were being signed. Young suggested that if the employees petitioned to get their cards back, the Union would have no bargaining power.[16] Trimble and Sowders drafted such a petition and circulated it.[17] Young supplied Trimble with the address to which it should be sent.

The complaint does not allege Respondent's involvement in the origination and circulation of the September 25 petition as independently violative of Section 8(a)(1).[18] It does allege such assistance with respect to the card revocation petition and both solicitation and encouragement of the decertification petition by providing company-paid time and transportation to the employees who filed that petition. Those allegations are supported by a preponderance of the evidence. An employer may not underwrite the filing of a decertification petition by providing time off with pay and transportation for those so engaged; to do so is to provide unlawful assistance. *Lee Lumber & Building Material*, 306 NLRB 408 (1992). Even if Trimble were to be discredited with respect to which shift she had worked on December 10, the evidence establishes that Respondent permitted Sowders to use companytime and transportation to file the decertification petition.

Respondent contends that Young merely gave advice to the employees concerning these petitions when it was solicited of him. I have found that he went beyond that suggesting, instigating, and encouraging the circulation of them. His conduct went beyond the mere ministerial and interfered with employee rights under Section 7 in violation of Section 8(a)(1). *Central Washington Hospital*, 279 NLRB 60, 64–65 (1986), and cases cited there.

2. Prohibition of ''Union Talk''

Respondent does not prohibit employees from talking among themselves, even about nonwork-related matters, while they are working. Such conversations are common and commonly engaged in by supervisors as well as rank-and-file workers.

However, on several occasions in mid- to late November, Karen Haggard, production supervisor, directed employees not to talk about the Union while they were working, emphasizing her orders with threats of discharge. The following incidents are undenied.

On November 18, Kathy Ellis was picking up tallies at the laminator takeoff when Haggard approached her. Haggard told Ellis that ''she had four complaints of me talking union during company time and she wanted me to know if it continued, she'd have to fire me and that if Bill Snyder knew about it right now, he would fire me.'' When Ellis explained that the employees were wearing black arm bands to protest the discharge of another employee, Haggard told her that ''she didn't know who she was talking to when [she] talked to people.''

On that same day, Donna Glasson was called into the die cutting office by Haggard; Pat Ross, converting supervisor was also there. Haggard told Glasson that she had several complaints about Glasson talking union on companytime and accused her of stopping production. Glasson denied it, said that several employees had asked her questions, on her own

[15] This entire incident is difficult to understand and resolve. However, noting that her timecard clearly indicates a 6:50 a.m. start and a 3:30 p.m. conclusion to her workday, consistent with her testimony, and further noting that Respondent prepared two versions of this writeup, apparently redoing it after discovering that the first was rife with errors (the spelling of her name, the date, and the time she purportedly completed work on December 10), I am compelled to credit Trimble. I find that she clocked in and was paid for the first shift on December 10, even though Respondent knew that she had accompanied Sowder to the NLRB office in order to file a decertification petition. The writeup, I find, was an attempted coverup.

[16] Young did not deny the statement attributed to him and Sowders only denied that Young had requested them to undertake this activity. Respondent endeavored to discredit Trimble by suggesting that it was improbable that Young would have suggested this petition in order to weaken the Union's bargaining power when the contract had already been agreed on. The statement, coming out of the mouth of a layman, was not so improbable as to compel the discrediting of an otherwise credible witness, at least in the absence of a denial.

[17] During the circulation of this petition, one emplyee (Hall) was observed in an apparent solicitation by a group of antiunion employees while Snyder was standing with, or near, them. Another employee (Hendershot) agreed to sign the petition after a disagreement with her supervisor which discouraged her from signing it was reported to Young by Trimble and then subsequently rectified by the supervisor. The evidence with respect to these incidents is suspicious but too speculative to warrant additional conclusions of management involvement.

[18] Apparently, there was no timely filed charge so alleging. See G.C. Br. 19.

time. Glasson told Haggard that she had not realized she had talked to anyone on companytime. She asked who had complained; Haggard would not tell her. At the conclusion of this conference, Haggard told Glasson that she did not want to hear about Glasson talking to anybody about anything that does not pertain to work or it could cost Glasson her job.

Around the same time, David McNeelan was talking to Tammy Holden about union-related matters while they worked. The conversation stopped when Haggard walked by and then resumed. Shortly thereafter, Haggard returned to McNeelan and told him that if he wanted to talk to Tammy about the Union, he should do so on his own time. Haggard told McNeelan that she knew what they had been talking about because Tammy had told her.[19]

Contrary to Respondent's contentions, the law is not ''well settled that it is not an unfair labor practice for a supervisor to warn employees about discussing union topics during work hours.'' In fact, the contrary is the well-settled proposition of law. ''An employer may not for union reasons or in a disparate manner penalize employees for discussing the union during working time.'' The prohibition of such conversations and threats of discharge to enforce such a prohibition violate Section 8(a)(1) where, as here, employees are permitted to talk about nonwork-related matters while they are working. *Columbus Mills*, 303 NLRB 223, 229 (1991).[20]

3. Interrogation

Charles Denton was 1 of approximately 14 employees listed as newly appointed temporary stewards in a letter given to the Employer on November 18. On November 22, Snyder initiated a conversation with Denton, asking, in a jovial manner, what a temporary shop steward was. Denton described the position as one who assists another employee when that employee is disciplined. Snyder countered with, ''Do you feel comfortable with that position?'' and went on his way.

In early January, Snyder initiated a conversation with Angela Spaugh. Spaugh was wearing a union button, as she had since the election, and Snyder asked her what it meant. She replied that she did not know. Subsequently, he came back to her, at her machine, and asked to speak with her at some point about why she supported the Union. She said ''Okay'' and walked off. Snyder followed her, repeating his question. When she told him of discrimination, favoritism, and other problems in the plant, he insisted that she had been mislead by people in the plant.

These incidents are undenied and, under the circumstances present here, cross the line between lawful and unlawful interrogation even though the employees had openly proclaimed their support for the Union. Snyder was a high-ranking supervisor and his remark to Denton was implicitly threatening in nature, notwithstanding its jovial tone. His questioning of Spaugh was persistent, continuing even after she had twice signaled that she did not want to discuss the matter with him. Moreover, these interrogations occurred in the context of other unfair labor practices and union animus.

On December 9, Karen Moore, then the Union's recording secretary, was called over to the die cut department by Robbie Baker. Baker was in the process of telling her about having been timed when he went to the bathroom when, Moore claimed, Die Cut Manager Courtney Carr walked up and asked them what they were talking about and whether they were talking union. Carr denied ever asking Moore and Baker whether they were talking union.

Moore voluntarily terminated her employment at the end of January. On her last day, Second-Shift Supervisor Wayne Pennington called her into his office and gave her a written warning for poor attendance, saying that it was something he should have done 2 months earlier. He then asked whether he had done anything to make her favor the Union. When she described impressions of favoritism, he told her why he did not think a union was necessary at Rock-Tenn and of his brother's unfavorable experiences in a union plant. Pennington acknowledged having a closing interview with her but claimed to have no recollection of what they talked about.

Moore was a straightforward witness, no longer employed by Rock-Tenn and lacking any reason to fabricate testimony. However, her testimony as to Carr's alleged interrogation was not corroborated by Baker, who also testified but not about this incident. Given the absence of such corroboration, and noting that the alleged interrogation took place when Moore was called away from her job and into Carr's department, and thus appeared to involve an interruption of production, I reject General Counsel's contention that Carr unlawfully interrogated Moore and Baker in violation of Section 8(a)(1).

If all that had happened on Moore's last day at Rock-Tenn was a closing interview wherein a known union adherent was questioned about the factors that encouraged her to support the union, I would recommend that the allegation of interrogation by Pennington also be dismissed. The desire for union representation frequently springs from employee perception of employer mismanagement or abusive work practices. An alert and intelligent manager would want to know what management might have done to provoke the union activity if that information could be garnered in an atmosphere free of coercion and without seeming to unlawfully promise the correction of abuses or the grant of benefits. Interviews of voluntarily quitting employees could be a fruitful and potentially noncoercive source of such information. However, given Respondent's union animus, its other unfair labor practices, and the belated and seemingly vindictive discipline assessed

[19] General Counsel argued that Haggard's statements were additionally violative because they created the impression that she ''maintained a cadre of informants among the work force.'' However coercive it may be to tell an employee, in the context of threatened discipline, that other employees are reporting on her union activity, I cannot find that it amounts to the ubiquitous impression of surveillance violation. The gravamen of such a violation is that employees are lead to believe that their union activities have been placed under surveillance. *South Shore Hospital*, 229 NLRB 363 (1977). The volunteering of information concerning such activities by other employees such as is indicated here, without evidence of management solicitation of that information, may be reprehensible but it is not employer surveillance.

[20] *Swan Coal Co*., 271 NLRB 862 (1984), does not stand for the proposition asserted by Respondent. In that case, a supervisor told a known union adherent that other employees did not appreciate his prounion position and that he could not assure that employee's personal safety on the job. The Board rejected the judge's finding that the statement created an impression of surveillance but upheld the finding that it constituted a threat of physical harm. Nothing in that case legitimizes a prohibition of prounion discussions among employees, even where other employees may have brought those discussions to the supervisor's attention or complained.

against Moore as she was terminating her employment, I am compelled to find an 8(a)(1) violation in this interrogation. Moore was still an employee and the circumstances, I find, were indeed coercive.[21]

4. Threats—*Weingarten* rights

In early to mid-December, press operator Robbie Baker was sent to the office by his leadman, Terry East, following a series of arguments about his work. He was told that they were ''going to have a meeting.'' Fearing that he was going to be disciplined, Baker called for his union steward, Cliff McCrory, to accompany him. When McCrory attempted to enter the office with Baker, he was physically prevented by East, who told him to wait outside until Wayne Pennington arrived. When Pennington similarly required McCrory to wait outside, Baker insisted that he had a right to have a steward appear on his behalf. Pennington told him, ''No, I'll decide whether you have a right to have a shop steward come in. Find out whether we have a problem here or not.''

Similarly, McCrory asked Pennington whether he could participate in the meeting. Pennington told McCrory that he could not be there until called by Pennington, that if Pennington needed McCrory, he would call McCrory. Shortly thereafter, McCrory attempted to clarify his role as steward and told Pennington that he thought he had a right to be present if requested by an employee. Pennington told him that he ''wasn't allowed to be there unless I call you there . . . . If I catch you off your job playing union steward . . . I will clock you out. And I'll tell anybody that in the whole plant . . . you will be out . . . I'll clock you out right then . . . . This union stuff is going to go.''

Pennington acknowledged that he initially sent McCrory back to his work station, telling McCrory that he did not know what the situation was until he talked with East. McCrory, he said, was told that if he was needed by Pennington, Pennington would come and get him. Pennington also acknowledged telling McCrory not to leave his work until told that Pennington needed him; he denied telling McCrory that he could get in trouble ''for playing union steward.'' He did not deny saying that the ''union stuff is going to go.''

McCrory and Baker were both credible witnesses; I was more favorably impressed with their affirmative testimony than with Pennington's denials. Moreover, I find the attitude attributed to Pennington by these employees to be consistent with other conduct attributed to management representatives and with management's generally disdainful attitude toward the Union.

Respondent and its supervisor, contending that their actions were appropriate, entirely misperceive the thrust of *NLRB v. J. Weingarten*, 420 U.S. 251 (1975). The right to the presence of a union steward is personal to the employee; it is not for the employer to determine whether the employee needs the steward. It is certainly not dependent on whether the employer needs a steward to be present. That right arises when the employee who is called into an investigative meeting with supervision reasonably believes that disciplinary action will result from the investigation and requests the presence of a union representative.

All of the relevant factors are present here. Baker had been engaged in a running dispute with his leadman, resulting in his being sent to the office. The purpose for which he was being sent was clearly investigatory; Pennington acknowledged that it was to find out if there was a problem. Baker requested that the steward be present and that request was repeated by the steward, McCrory. Pennington not only denied the requests, but also threatened McCrory with discipline if he persisted in ''playing union steward,'' i.e., continued to act in a representative capacity. He also threatened that ''this union stuff is going to go,'' a clear reference to Respondent's efforts to unseat the Union as the employees' representative. It is irrelevant that no discipline resulted from the meeting so long as the employee possessed the requisite reasonable belief that such discipline might result.

Accordingly, I find that by denying an employee his *Weingarten* right to the presence of a union steward at an investigatory interview where there was a reasonable belief that discipline might result, and by threatening a union steward with discipline for attempting to serve an employee in his representative capacity, Respondent has violated Section 8(a)(1).

5. Impressions of surveillance

On December 12, Carr told Pat Bishop, the Local's union president, that an employee had said that she had told that employee that the Union would not represent employees in grievance-and-arbitration proceedings if they were not union members. As she recalled their conversation, she told him that that was correct because the membership voted on all expenditures. He told her that he was ''tired of you guys misleading the people and that she had to stop it or further action would be taken.''[22]

General Counsel alleged that by this exchange, Carr created the impression of surveillance in that her future conduct would be monitored. Carr had no business threatening a union officer with employer-imposed discipline if she, in her union officer capacity, misstated union obligations and benefits. His remedy for such alleged misinformation was to put forth the correct information. Carr's conduct may have been threatening in nature, but it was not alleged as a threat in violation of Section 8(a)(1). It was alleged as employer creation of the impression of surveillance. As pleaded, the allegation must fail. Carr made clear that an employee had told him what she had said. I find nothing in what Carr said which would lead an employee to believe that her union activities had been, or would in the future be, placed under surveillance. See *Clark Equipment Co.*, 278 NLRB 498, 503 (1986); *South Shore Hospital*, supra. Accordingly, I shall recommend that the allegation contained in paragraph 5(i) of the complaint be dismissed.

On the evening of December 19, after their first break, Pennington and Snyder met with the second-shift employees. Pennington started out by telling them that a lot of employees were calling each other names and harassing one another

[21] As noted by Respondent, the record contains no evidence supporting the allegation of par. 5(a) of the complaint, alleged interrogation by Mike McGinnis in September and October. Accordingly, I shall recommend that this allegation be dismissed.

[22] His recollection is similar. He told Bishop that her understanding of the Union's obligation to nonmembers was wrong and, now that he had corrected it, any repetition of what she had said would be considered an intentional violation of shop rules.

with regard to the Union ''stuff,'' that it was hurting productivity and quality. People were complaining and they were going to put a stop to it. As he spoke, Pennington said that ''these union people are going to have to stop.'' He hesitated and then added, ''as well as the non-union people.'' Snyder repeated what Pennington had said and added that if management found out who was doing these things (harassing people, calling people names), they would be severely punished.

Following this meeting, Barbara Gruhl, a janitorial employee, spoke with Snyder when she went into his office to empty his trash. She told him that she agreed that everyone should get along and pointed out that while she and her sister disagreed about the Union, they respected each other's opinions and did not let it interfere with their relationship. Snyder responded, telling her, ''I'm tired of all this, and I tell you there's not going to be a union right now . . . we made sure of that, that we have the majority of the people against the union and . . . we're going to put a stop to it permanently . . . those that are causing all these problems are going to be severely punished, I'll see to it personally myself.''

Snyder continued, talking about both productivity and the quality of work being done. Gruhl agreed and pointed out to him that Glenda Sowders, who had been very active in the antiunion campaign at work, had been leaving her own work on the day shift uncompleted. The burden of that unfinished work, she said, was falling on her on the second shift. Snyder attributed her added work to Eddie Schonfeld; she disputed him, noting that Schonfeld's work had improved following a disciplinary layoff (discussed infra). Gruhl said that she had complained to Bramble about Sowders not doing her job and been told that that was what she, Gruhl, was there for. After that, she told Snyder, she just kept her mouth shut. Snyder replied, ''Well, that's the way it should be . . . we're going to just stop it all.''[23]

Counsel for the General Counsel contends that by the foregoing statements, Snyder threatened union adherents with discipline. I agree. Snyder's ire was clearly directed at those who were continuing to support the Union, not its opponents; that is clear from his repeated references to ousting the Union and his glossing over of Gruhl's complaint about Sowders. Those same references unlawfully conveyed the sense that not only was it risky to continue to support the Union, but that it was futile, a useless endeavor. Management, he emphasized, was going to oust the Union. *Cannon Industries*, 291 NLRB 632, 637 (1988).

D. *William Schonfeld*

The 8(a)(1) and (3) allegations

On November 6, the Union notified Respondent as to who its temporary shop stewards would be on each shift. One of those so designated was William Schonfeld. On that same day, Schonfeld, who had not previously revealed his union sympathies, also distributed a handbill outside the plant, before work, seeking more signatures on the Union's membership cards.

In midmorning, his supervisor and longtime acquaintance, Brian Bramble, told Schonfeld that he had seen Schonfeld and he ''thought it was pretty silly and stupid of [him] standing out handbilling for a union that he did not think will ever come in.'' Schonfeld told Bramble that he had been on his own time.

On the following day, Bramble gave Schonfeld a written warning, purportedly for standing around in the tow motor shop, not doing his job. The written warning referred back to a verbal warning of August 6 and directed him to see Glenda Sowders, the lead janitor, when he ran out of work.

Schonfeld's janitorial job required him to go into the tow motor shop where he emptied trash receptacles, checked and charged the sweeper, and assisted the mechanics. He was emptying the trash barrels when Bramble disciplined him. Bramble did not describe any poor work performance by Schonfeld; he only identified the warning which he had given Schonfeld and asserted that it was for poor work performance.

In mid-November, Bramble called Schonfeld into his office. Schonfeld asked Bramble if he had done anything wrong and said that if he was in trouble, he would like to have a union steward. Bramble told him that if he insisted on having a steward, they would go up to Mr. Young's office where Schonfeld could push for a steward and Bramble would seek his termination or a 3-day layoff. On Bramble's assurance that he would not get in trouble, Schonfeld accompanied Bramble into the latter's office. Once there, Bramble told Schonfeld that ''he really felt like [Schonfeld] was messing up when [he] was talking to the union people, and [Bramble] felt like if [Schonfeld] would just get away from the union people that everything would be fine.''

Bramble claimed to have no recollection of any occasion when Schonfeld requested the presence of a union steward; he denied telling Schonfeld that they would go to Young's office and talk about discipline if he insisted on a steward. He did not deny telling Schonfeld that he believed Schonfeld was ''messing up'' by talking to union people and suggesting that he should get away from them.

On December 5, Schonfeld got into an argument with Sowders and Trimble; he had been told they were complaining to management about him. His argument with Trimble, in particular, got loud and heated; she cursed him out. He told them to mind their own business. Gary Browning, assistant maintenance supervisor, told the two women to go on about their jobs but took Schonfeld to the office. Browning commiserated with Schonfeld about the name calling, told Schonfeld that he was doing fine, and said that he should just do his job. However, he also said he would have to tell Bramble about the incident the next day.

On December 6, Schonfeld was called to Bramble's office; Browning was present. Bramble told Schonfeld that he was due for a 3-day layoff and Schonfeld asked whether it had anything to do with his argument with Trimble. Bramble said that that had ''helped'' but that he ''just felt like [I] needed off . . . for not doing [my] job.'' Bramble cautioned Schonfeld, saying that ''he felt like if I would just come there, if I would get away [from] the union situation and come there and do my job I wouldn't have a problem there.'' There was no identification of what work he had failed to do.

Bramble testified that he issued the suspension based on information which Browning had given him (purportedly in writing) to the effect that Browning had seen Schonfeld

[23] Gruhl was a thoroughly convincing and credible witness and I find that her testimony more accurately reflects the events of both the meeting and her conversation with Snyder than does Snyder's.

standing around the laminator and in other places where he had no work responsibilities, ''harassing the employees'' and had had several talks with him. Bramble ''did not know the exact issues.'' Browning did not testify and no writing from him concerning this event was proffered.[24]

On November 7, following the written warning, Schonfeld had relinquished his position as a shop steward. In February 1992, he quit his job. He attributed both actions to the pressure he was getting at work about his union activity.

In May, Schonfeld called Bramble and asked for his assistance in securing a current forklift driver's license. At Bramble's suggestion, he came to the office where Bramble told him that his license would be renewed if he would sign a paper to ''straighten out all this union bull shit.'' At Bramble's direction, Schonfeld wrote out and signed a statement to the effect that he had not intended to file unfair labor practice charges, that he did not feel that he ''was done wrong,'' that he had the 3-day suspension coming, that the Union had pressured him into filing charges, and that he did not wish the charges to go any further because they ''are not true.''

Subsequently, Schonfeld was subpoenaed to testify on behalf of the General Counsel in this proceeding. He called Bramble to ask what he should do in view of the statement he had previously given Bramble. Bramble, he said, told him to call and try to cancel the subpoena.

The hearing was rescheduled after Schonfeld received the first subpoena. He received a new subpoena in early January 1993. At about that same time, he also heard that Sowders was ill and that there might be an opening in the maintenance department. He called Bramble, asked about the possibility of a job, and told Bramble that he had again been subpoenaed. Bramble told him that his chances of being hired would be improved if he would cancel his appearance, that the ''sooner [he] got the union situation taken care of'' the better chance he would have. Shortly before the hearing, Bramble called him in order to find out whether he was going to appear. Schonfeld told Bramble that he was going to honor the subpoena and Bramble concluded the conversation, stating that they would see each other at the hearing.

Bramble, who described himself as a ''big brother'' to Schonfeld, denied much of the foregoing, at least in general terms. He did not deny telling Schonfeld that he should avoid the union supporters. He claimed that Schonfeld had initiated all of the discussions concerning the subpoenas and the pending charges. Schonfeld, Bramble testified, asked what he could do ''to set the record straight'' and volunteered to write a letter to the Labor Board. However, with the exception of some minor confusion with respect to dates and whose handwriting is on the retraction letter, Schonfeld's testimony was consistent and convincing. I am compelled to find that Bramble, considering himself to be a big brother or mentor to the less articulate and perhaps intellectually inferior Schonfeld, sought by ridicule and discipline to persuade the latter to cease his union activities, and, failing that, sought to persuade Schonfeld not to testify against the company and himself.

Thus, I find that Bramble unlawfully threatened Schonfeld with discipline if he persisted in requesting the presence of a union steward when called to the office. I further find that Bramble, in violation of Section 8(a)(1), attempted to cause Schonfeld to retract allegations and testimony given to the Board and sought to discourage him from complying with subpoenas issued by counsel for the General Counsel. Such interference with the vindication of statutory rights is violative of Section 8(a)(1). *Clark Equipment Co*., 278 NLRB 498, 519 (1986); *Firestone Steel Products Co*., 228 NLRB 1039, 1043 (1977).

General Counsel has alleged that the November 7 warning and the December 6 suspension were motivated by Schonfeld's union activity and therefore violate Section 8(a)(3). I must agree. The warning followed immediately on the heels of Schonfeld's first open union activity, activity which had been noted and derisively commented on by the supervisor who issued that warning. The 3-day suspension, though coming after Schonfeld had withdrawn from his steward's position, was issued after, and in part because, he had argued with two of the most openly antiunion employees. It was accompanied by the ''big-brotherly'' advice that everything would be better if Schonfeld would just stay away from the union situation. Most significantly, these disciplines were issued almost cavalierly, with no investigation or explanation. In neither case did Bramble question Schonfeld, even when he was suspending his ''little brother'' for conduct allegedly occurring while Bramble was away from the plant, conduct about which Bramble knew little. Moreover, this record is barren of affirmative evidence supporting either action. Respondent offered nothing but Bramble's conclusion that conduct had occurred which warranted such discipline. General Counsel has established a prima facie case of antiunion motivation; Respondent has failed to sustain its burden of showing that the same (or any) discipline would have issued even in the absence of union or protected activity. *Wright Line*, 251 NLRB 1083, 1089 (1980), approved by the Supreme Court in *NLRB v. Transportation Management*, 462 U.S. 393, 400–403 (1983).

E. *Katherine Ellis and Patricia Bishop*

The 8(a)(3) allegations

On January 15, Kathy Ellis, the then union president, told her supervisor, Karen Haggard, that she had been asked to appear at the NLRB Regional Office on the following day to answer a charge filed by the Company. Haggard said ''Okay.'' However, when Ellis returned, Haggard asked whether she had received a subpoena, saying that unless Ellis had a subpoena she would have to take a point for absenteeism. Ellis said that she did not know that a subpoena was required. She subsequently asked to see her absenteeism record; it stated: ''1–16–92—Union business, 0 point if subpoena gets brought in, 1 point if not brought in.'' Similarly, her absentee calender was marked ''Union'' for January 16. On March 20, Ellis was issued an attendance counseling for having 3.5 accumulated absentee points, including one point for the January 16 absence. The record of that counseling states, for that date, ''Union, No subpoena.''

Ellis was entitled to a leave of absence, for union business, pursuant to the parties' collective-bargaining agreement. Haggard testified that she did not consider the implications of

[24] Gruhl's testimony that Schonfeld had been neglecting his work, or performing it inefficiently, to some extent before this layoff and showed improvement thereafter is scant support for the proposition that the layoff was motivated by specific misconduct or poor work.

that contract when deciding to give Ellis the absenteeism point.[25]

Moreover, Respondent's attendance policy provides for one point to be assigned for each absence except ''for absences provided for in the Employee Handbook or other published policies.'' The collective-bargaining agreement must be considered such a ''published policy.'' By insisting on a subpoena to justify an absence for ''union business'' (particularly where it had permitted the use of companytime and transportation to file a decertification petition), by denying Ellis an excused absence to which she was entitled for union business, and by assessing a disciplinary point against her, I find that Respondent has discriminated against Ellis because of her union activity in violation of Section 8(a)(3).

On May 29, 1992, Ellis and Pat Bishop submitted requests for 2-day leaves of absence, for union business, scheduled for June 1 and 2. Young denied their requests, asserting that Respondent did not give leaves of absence for less than 7 days. According to Young, absences of less than 7 days may be excused under a separate policy. He also justified his denial on the basis that the Employer no longer recognized the Union and there was no collective-bargaining agreement. The employees were not told that their requests would be granted under any other procedure.

I have previously found that Respondent was obligated to continue recognizing the Union beyond the expiration of the certification year. Thus, it cannot defend against this allegation on the basis that there was no union. To refuse a request on that ground is prima facie discriminatory. Moreover, Respondent has failed to sustain its burden of proving that the leave request would have been denied even if it were not for union business. *Wright Line*, infra. Young's reliance on a rule limiting the use of leaves of absence to absences of 7 days or more is unsupported by Respondent's employee handbook. The leave-of-absence provision found there is not so limited, it merely refers to occasions when an employee finds it necessary to request time off from work and allows for leaves of up to 30 days and longer. Accordingly, I find that by denying the requests of Ellis and Bishop for leaves of absence for union business, Respondent had discriminated against them in violation of Section 8(a)(3).

The morning of August 27, 1992, had begun with a meeting wherein Supervisor Karen Haggard stressed the importance of quality production. Later that morning, Dallas Brinker, the senior cut-to-size machine operator, was sent home, purportedly for intentionally stacking damaged product. The employees told Kathy Ellis that they were upset and concerned because of that operator's long seniority and the fact that this had not happened before. After the morning break, Ellis, whose job involved going to each machine to keep records and check quality, went to each of the operators, took samples of their work, circled where the machine fingers had dented the product, asked whether those dents or dings were normal, and put the pieces aside.

At 9:30 a.m., Haggard called a meeting of the cut-to-size operators and asked Ellis to attend. Haggard was angry. She showed the operators the parts for which Brinker had been sent home and accused Ellis of taking other product to the operators and telling them that they would be sent home for producing that quality of work. She told Ellis that it was not Ellis' job to question her discipline or to cause confusion on the floor by threatening people's work. Both during and after the meeting, Ellis tried to explain what she had done; Haggard wasn't listening.[26] Ellis said that the Union had a role in such matters and Haggard stated that she did not feel that she had to come to Ellis each time she disciplined someone.

That afternoon, Haggard took Ellis into Snyder's office. Ellis was told that employees had complained to Snyder that she had threatened the operators that they would be sent home for running what was acceptable work. Snyder told her that she had no right to do that and that if she had a problem on the floor or with any of the employees, she was to come to them. It was not her business, he said, to go around and talk to operators, causing confusion on the floor and undermining the supervisor. He gave her what he described as a severe writeup. It stated:

> Written warning. For causing confusion on the production floor by putting samples of production on machine and informing employees that if they do this they will be sent home. Sample Kathy put on machine is not sample of the questioned quality problem. Kathy was told this can't happen, that it only causes confusion to others and they in turn are very upset about it. Violates work rules 12 [making false or malicious statements concerning the company, its employees or its products].

She refused to sign it. She left the meeting without mentioning that she believed that she was engaged in permissible union activity. Snyder made no mention of the Union.

Ellis believed that it was her responsibility as the Union's president to investigate such matters and that it was permissible for her to do so as long as it did not impede her work. When initially confronted by Haggard, Ellis made it clear that she was acting in her union capacity. Haggard would hear none of it, protesting that she did not have to come to Ellis each time she disciplined an employee; she rejected or ignored the Union's role.

Even assuming that Haggard and Snyder actually believed that Ellis had acted improperly, the discipline must be found violative. There is no probative evidence supporting Respondent's contention of impropriety. Neither Haggard nor Snyder witnessed Ellis talking to the operators. The only probative evidence in this record as to what Ellis did is that given by Ellis, Hendershot, and Denton; it does not support

[25] Haggard contended that Ellis had said that she was going to ''court on union business'' and was told, before she left, that she would have to produce a subpoena in order to avoid being charged a point for absenteeism. That was why, Haggard claimed, she did not consider the contract. I credit Ellis who had no reason to tell Haggard that she was going to ''court'' when she had a perfectly valid reason for a legitimate and excused absence. I note that Haggard did not apply the contract and revoke the point when she learned that the union business did not involve a court appearance.

[26] Haggard claimed that employees Karen Hendershot, Tammy Perkins, and Brian Keller had told her that Ellis ''was up to something,'' that she was showing the operators parts for which Brinker had allegedly been sent home and stirring them up. Haggard's testimony was not corroborated by the operators who testified, Hendershot and Denton. Both testified that Ellis merely looked at the parts they were producing, questioned whether such dings as were on them were normal, circled those dings, and set them aside. There was no interruption of their work. I credit Ellis as so corroborated.

Haggard and Snyder's accusations. At best, Respondent is in the position of mistakenly believing that Ellis had engaged in misconduct in the course of union activity. ''Section 8(a)(1) is violated if it is shown that the [disciplined] employee was at the time engaged in a protected activity, that the employer knew it was such, that the basis of the [discipline] was an alleged act of misconduct in the course of that activity, and the employee was not, in fact, guilty of that misconduct.'' *Burnup & Sims, Inc*., 379 U.S. 346, 347 (1964). The quoted language accurately describes the situation here and I so find.

CONCLUSIONS OF LAW

1. The Union is the exclusive collective-bargaining representative of the employees in the following collective-bargaining unit which is a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees of the Employer at its Columbus, Indiana facility, but excluding all office clerical employees, all professional employees, and all guards and supervisors as defined in the Act.

2. By assisting, providing financial assistance for, and encouraging the filing of a decertification petition, by assisting and encouraging the solicitation of a union-membership revocation petition, by threatening employees with discipline if they are caught talking about the Union at work, by coercively interrogating employees about their union membership, activities, and desires, by denying employees their *Weingarten* rights, i.e., their right to the presence of a union steward when called in to the presence of a supervisor under circumstances where they reasonably believe they may be disciplined, by threatening employees with discipline if they insist on their *Weingarten* rights, by threatening employees that continued union representation would be futile, by threatening employees with discipline or discharge for engaging in other union activities, and by interfering with the Board's processes by attempting to induce employees to withdraw allegations filed with the Board and to refuse to honor Board subpoenas, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

3. By discriminatorily disciplining employees for engaging in union activities and by discriminatorily denying employees leaves of absence in order to engage in union activities, the Respondent has violated Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

4. By failing and refusing to bargain in good faith with the Union during the certification year, by insisting on a contract term coextensive with the certification year, by withdrawing recognition from the Union at the conclusion of the certification year and thereafter refusing to meet and bargain in good faith with the Union without possessing a reasonable belief based on objective considerations that the Union no longer possessed majority support, by refusing to furnish the Union with information relevant and necessary to the performance of its role as collective-bargaining representative of the employees in the above-described appropriate unit, and by unilaterally changing terms and conditions of employment of unit employees without notice to or bargaining with the Union as the representative of those employees, Respondent has violated Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily suspended an employee, and discriminatorily assigned absenteeism points and warned employees because of their union activity, it must make that employee whole for any loss of earnings and other benefits for the period of the suspension and it must expunge all references to that suspension and to the discriminatorily issued warnings and absenteeism points from its records and it must notify the employees that this has been done.

The Union was certified in February 1991; bargaining began on May 20. I have found that at all times, Respondent had failed and refused to bargain in good faith with the Union, culminating in its insistence on a contract term coextensive with the certification year and with the withdrawal of recognition on the expiration of that certification year. The Union and the employees have been entirely deprived of the benefits of the certification year. Accordingly, I must recommend that the certification year be extended for a full year in order to provide the Union with a sufficient period of time for the bargaining process to have a chance to succeed.

Because of the serious nature of the violations and Respondent's egregious, widespread, and long-continuing misconduct, demonstrating a general disregard for the employees' fundamental rights, I find it necessary to issue a broad order requiring the Respondent to cease and desist from infringing in any manner on rights guaranteed employees by Section 7 of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[27]

ORDER

The Respondent, Rock-Tenn Company, Columbus, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Assisting, providing financial assistance for and encouraging the filing of decertification petition, assisting and encouraging the solicitation of a union-membership revocation petitions, threatening employees with discipline if they are caught talking about the Union at work, coercively interrogating employees about their union membership, activities, and desires, denying employees their *Weingarten* rights, i.e., their right to the presence of a union steward when called in to the presence of a supervisor under circumstances where they reasonably believe they may be disciplined, threatening employees with discipline if they insist on their *Weingarten* rights, threatening employees that continued union represen-

[27] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

tation would be futile, threatening employees with discipline or discharge for engaging in other union activities, and interfering with the Board's processes by attempting to induce employees to withdraw allegations filed with the Board and to refuse to honor Board subpoenas.

(b) Discriminatorily disciplining employees for engaging in union activities and discriminatorily denying employees leaves of absence in order to engage in union activities.

(c) Failing and refusing to bargain in good faith with the Union, insisting on a contract term coextensive with the certification year, withdrawing recognition from the Union at the conclusion of the certification year, and thereafter refusing to meet and bargain in good faith with the Union without possessing a reasonable belief based on objective considerations that the Union no longer possesses majority support, refusing to furnish the Union with information relevant and necessary to the performance of its role as collective-bargaining representative of the employees in the above-described appropriate unit and unilaterally changing terms and conditions of employment of unit employees without notice to or bargaining with the Union as the representative of those employees.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain in good faith with United Paper Workers International Union, AFL–CIO, CLC, and its Local No. 907, as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit and continue to do so for 1 year thereafter as if the initial certification year had not expired:

> All production and maintenance employees of the Employer at its Columbus, Indiana facility, but excluding all office clerical employees, all professional employees, and all guards and supervisors as defined in the Act.

(b) Make William Schonfeld whole for any losses he suffered as a result of the discriminatorily issued suspension and revoke the warnings discriminatorily issued to William Schonfeld and Kathy Ellis and expunge all references to those warnings and suspension from their personnel files and notify them in writing that this has been done and that evidence of the unlawful actions against them will not be used as a basis of future personnel actions against them.

(c) Post at its facility in Columbus, Indiana, copies of the attached notice marked ''Appendix.''[28] Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

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[28] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''